

**REMARKS**Priority Document

The Office Action indicates that no priority document is present in the scanned application as-filed. Applicant encloses a certified copy of Canadian Patent Application No. 2,445,008 filed October 10, 2003.

Allowable Subject Matter

Applicant appreciates the Examiner's efforts to acknowledge allowable subject matter in the Office Action. The Office Action indicates that claim 12 is allowed. It is understood that claim 12 is objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Amendments to the Claims

Claims 1-14 are under examination with entry of the present Amendment. Original claims 3, 4, 6-10 and 14 remain unchanged. Claims 2, 5, 12 and 13 have been previously presented. Claims 1 and 11 have been amended, and claim 15 is newly added as set out below.

Claims 1 and 11 have been amended to insert the indefinite article "a" before the words "truck" and "bracket," respectively.

Claim 15 has been newly added and incorporates subject matter of claim 12 (indicated as allowable subject matter in the Office Action). Claim 15 is drawn to a collapsible shelter for mounting in the bed of a truck, the truck bed having a floor, a front end and a rear end and at least two side walls substantially parallel to a longitudinal axis, the collapsible shelter comprising:

- (a) a substantially horizontal base releasably attached to the truck bed, raised above the truck bed floor;

- (b) at least one bunk attached to the base, the bunk being movable between a first position whereby the bunk rests on top of the base in the truck bed, and a second position whereby the bunk extends horizontally out and away from one of the side walls of the truck bed;
- (c) a frame having front and rear support members and a ridge pole being releasably connected at one end to the front support member and releasably connected at a second end to the rear support member, the front support member being pivotally attached to the front of the truck bed and the rear support member being pivotally attached to the rear of the truck bed, such that each of the front and rear support members pivot about an axis substantially perpendicular to the longitudinal axis of the truck bed to move between a first collapsed position and a second erect position, and wherein the truck bed further comprises tailgate support pins and upper tailgate locking pins located at the rear of the truck bed, whereby the rear support member is pivotally mounted to the tailgate support pins and releasably engages the tailgate locking pins to secure the rear support member in its erect position; and
- (d) a fabric shell releasably attached to the frame and to the bunk.

Support resides in the as-filed specification for example, at paragraphs [0034] to [0046].

No new matter has been added with the amendments made herein. Support for the amended and new claims is found throughout the application and in the as-filed claims. Applicant believes that the amended and new claims better define the invention in a manner supported by the original application, and in a manner so as to render moot the rejections as set out in greater detail below.

#### Rejections under 35 U.S.C. §103

The Office Action rejects claims 1-6, 8-11, 13 and 14 as being unpatentable over U.S. Patent No. 1,477,111 to Eaton in view of U.S. Patent No. 6,663,167 to Phillips *et al.* and U.S. Patent No. 4,294,484 to Robertson. The Office Action states that Eaton discloses the claimed shelter, lacking only the raised floor and pivotal front and rear support members which are disclosed by Phillips *et al.* and Robertson, respectively. The Office Action states that it would have been obvious to one

skilled in the art to provide in Eaton a raised floor as taught by Phillips *et al.* to provide increased storage and pivotal front and rear supports as taught by Robertson to collapse and erect the shelter quickly. The Office Action further states that:

As to claim 2, Phillips *et al.* has cross beams 30 and 50.

As to claim 3, Eaton has support member 32.

As to claims 4 and 5, Eaton has tension bar 26 and slide arm 27.

As to claim 6, see hinges 24, 25 and 29 of Eaton.

As to claim 9, the rear support of Robertson is an A-shaped frame and the front support has posts 66.

As to claim 10, Robertson has locking means 130.

As to claim 11, Robertson's bracket 74 is fastened to the floor through the side wall. In addition, Eaton teaches floor mounting of the rear support member.

As to claim 13, Eaton has platform 50.

As to claim 14, Applicant admits this structure is known in paragraph 0039.

Applicant respectfully traverses this rejection. Applicant submits that a proper obviousness rejection has not been made. *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007) articulated several guidelines for determining obviousness:

- 1) When a patent simply arranges old elements with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious.
- 2) A combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.
- 3) If a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.
- 4) When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 [obviousness] likely bars its patentability.
- 5) When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill

and common sense. In that instance that fact that a combination was obvious to try might show that it was obvious under §103.

- 6) When prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.
- 7) To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents (i.e., teaching or suggestion in the prior art); the effects of demands known to the design community or present in the marketplace; and background knowledge possessed by a person having ordinary skill in the art with ordinary creativity, insight, and common sense.

Applicant respectfully submits that a *prima facie* case for obviousness has not been made. Applicant's claimed invention does not constitute a predictable use of prior art elements according to their established functions. Applicant's claimed collapsible shelter comprises a base which is raised above the truck bed floor, allowing ample storage space which is readily accessible. One or more bunks are hinged to the base, and may be unfolded from the interior of the truck bed to extend horizontally from the side of the truck. Notably, the frame of the shelter provides unpredictable and unexpected results. The frame has front and rear support members which are pivotally attached to the truck bed, and a ridge pole which releasably attaches to the front and rear support members at its ends. The front and rear support members are hinged and pivotable about an axis perpendicular to the longitudinal axis of the truck. To raise the shelter, the front and rear support members are laid flat in the back of the truck, the ridge pole is fed through loops on the fabric shell, and the ridge pole is then attached to the front and rear support members. The user simply pushes the frame towards the front of the truck to raise the front and rear support members vertically, thereby raising the ridge pole and attached fabric shell. Assembly and disassembly of Applicant's claimed shelter are thus rapid and easy, requiring minimal physical effort from the user. A video demonstration of the quick assembly is featured on Applicant's website (<http://fabcoholdings.com/main.html>).

To Applicant's knowledge, prior art shelters are commonly heavy and bulky, including multiple moving components. Manufacture of such shelters is often expensive. Applicant's claimed shelter has few moving parts and is relatively inexpensive to produce. Further, Applicant's claimed

invention is surprisingly lightweight (less than 150 lbs), and is thus aerodynamically efficient and minimizes fuel consumption of the truck. One skilled in the art having common sense at the time of the invention would thus not have reasonably considered or expected that such a lightweight, easily and rapidly assembled shelter could be developed and serve as both a shelter and storage unit. Applicant's claimed shelter constitutes more than a predictable variation of the prior art.

Applicant further submits that the prior art teaches away from combining the references as indicated by the Office Action. In *KSR*, the Court provided a detailed discussion of *United States v. Adams*, 383 U.S. 39 (1966), stating that "the Court relied upon the corollary principle that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious." The Office Action has selected Eaton as the primary reference upon which all claim rejections have been based. Applicant submits that Eaton describes a different tent attachment compared to Applicant's claimed shelter. Eaton's invention relates to "a boot in rear of the driver's seat" (page 1, lines 10-17), and "a boot portion combined with the driving seat, said boot portion and driving seat being readily removable from the chassis and replaced by the ordinary touring or other body" (page 1, lines 25-29). Figure 1 shows a side view of the boot portion, while Figure 5 shows "the brackets, angle irons, bolts and nuts [which] form a readily detachable connection for the body portion which can be easily detached in order to put on the standard body when such is required" (page 1, lines 91-96). As indicated below, in Eaton's tent attachment, the entire boot (5) only or the entire boot (5) in combination with the driving seat is removed or applied to a car (highlighting for emphasis):

In constructing my tent attachment, I have designed it especially so that the entire boot can be applied to a car to replace the ordinary body when going camping. It will be obvious that provided the ordinary body is provided with holes so spaced as to register with holes in the brackets 2 and 7, such body will be interchangeable with the special boot, and this interchangeability can be conveniently arranged for whether the type having the boot only is used or that having the boot in combination with the driving seat (page 4, lines 15-27).

There is no "truck bed" described in Eaton since the entire boot (5) is removable or bolted to a car or "motor vehicle chassis" (page 4, lines 39-40). Assembly and disassembly of Eaton's tent attachment

are laborious since the entire boot (including the top, bed frames and other components) or boot in combination with the driving seat is removed or bolted to the vehicle chassis. In contrast, Applicant's claimed shelter is mounted within the truck bed having a floor, front end, rear end and two side walls, as explicitly recited in claim 1. The releasable nature of the base and beams to the truck bed sidewalls facilitates easy insertion and removal of the shelter by the user.

In the event that the Examiner considers the boot (5) of Eaton as analogous to Applicant's "truck bed" (which Applicant does not admit as being comparable), Applicant submits that Eaton relates to a tent attachment which rests flush with the floor of the "truck bed," and is entirely contained within the "truck bed" (see for example, Figure 3), negating any storage capabilities. In contrast, Applicant's claimed shelter comprises a base which is "raised above the truck bed floor" as recited in Applicant's claim 1, to provide ample storage space for luggage or other objects between the base and the truck bed floor. Since Eaton's tent attachment occupies all available space within the "truck bed," Eaton teaches away from provision of any storage space in this manner. Thus, the language of Applicant's claims distinguishes the teachings of Eaton.

Further, Eaton teaches away from Applicant's lightweight and easily assembled shelter. Applicant notes that Eaton's tent attachment requires "an upwardly swingable top 6" which forms a wall-like support for the ridge pole of the tent top (see for example, Figure 3), and a fixed rear vertical support (see for example, Figure 2). Eaton's tent attachment appears heavy, as evidenced by the requirement for "longitudinally extending side members 14" to prevent the wall-like "boot top swinging down as would otherwise occur" and "to support the boot top in the required vertical position" (page 2, lines 16-31; page 3, lines 84-87). Eaton's tent attachment also appears awkward and labor intensive to assemble. Among the many steps for assembly (page 3, lines 71-102), the tent top 55 is "thrown over the upright boot top 6" and "thrown over the struts," requiring the user to be capable of throwing a tent top above the roof of the motor vehicle (see Figure 2). In contrast, Applicant's claimed shelter comprises a frame including front and rear support members which are pivotally attached to the front and rear of the truck bed respectively, as recited in Applicant's claim

1. The front and rear support members readily and easily move between a collapsed to an erect position to raise the fabric shell forming the tent (see for example, Figure 3).

The Office Action turns to Phillips *et al.* and Robertson for teachings of a raised floor and pivotal front and rear support members, with the former allegedly disclosed by Phillips *et al.* and the latter allegedly disclosed by Robertson.

With respect to Phillips *et al.*, Applicant respectfully submits that there is no reason why one skilled in the art having common sense would have combined the prior art elements in the manner claimed, since the additional cited references do nothing to overcome the deficiencies of Eaton. Unlike Applicant's claimed shelter, Phillips *et al.* teaches away from a shelter having readily accessible storage space, and requires that the user physically raise the shelter to access the storage area:

With the camper or shelter in open position with the shell raised, the user can access the truck bed by raising the floor 14 and supporting the floor 14 using the rearmost crossbar 30 and placed into position as shown in FIG. 3. Alternatively, the rearmost crossbar can stay in position and a support bar pivotally attached to the underside of the floor 14 can be moved into position to rest on the upper side of the rearmost crossbar. This allows one person to easily access the storage space beneath the floor (column 5, lines 15-23).

...

When the floor is raised to access the truck bed, as shown in phantom lines, blocks 34 prevent the floor from slipping into the truck bed (column 4, lines 2-4).

The shelter of Phillips *et al.* comprises a rigid shell, rigid floor and flexible tent section among other parts, all of which must be raised in order to access the storage area. Consequently, the interior of the shelter also requires emptying of its contents each time access to storage is desired. Stable mounting of the crossbar, and anti-slip blocks are required to ensure that the shelter does not fall upon the user while accessing the storage area. Phillips *et al.* suggests that this lifting of the shelter "can be assisted by utilizing the same pneumatic cylinders or spring lifts used to assist in lifting of the shell" (column 2, lines 41-47), but does not specifically address or describe this particular

embodiment in any detail. In contrast, Applicant's claimed shelter provides safe and ready access to the storage space without requiring lifting of the entire shelter or provision of anti-slip blocks. Unlike Applicant's claimed shelter, Phillips *et al.* provides a shelter which is inconvenient and potentially unsafe. Phillips *et al.* teaches away from a convenient and safe shelter, as described by Applicant.

The Office Action turns to Robertson for teachings of pivotal front and rear support members. Applicant submits that Robertson's support elements are different than those of Applicant. Robertson states that:

Front and rear main frames 62 and 64 are pivotally attached to the front and rear ends, respectively, of the lower frame 57, and are shown in a raised frame position in FIG. 5. The main frames 62 and 64 are U-shaped and each main frame includes a pair of upwardly extending legs 66 with an upper transverse frame member 68 extending between each pair of the legs 66. An upper frame 70 includes a pair of slidebars 72 that are slidably attached to the transverse frame member 68 as shall be hereinafter described in greater detail. A pair of slidebars 72 may be provided for each transverse frame member 68 so that the front and rear legs 66 may overlap in the closed position. Although the rigid top 38 is shown partially removed in FIG. 5, it will be understood that the upper frame 70 is normally attached to and supporting the rigid top and forms a part thereof (column 6, lines 9-24).

Robertson's main frames necessitate several additional "framing" elements. Robertson's main frames are attached to a lower frame which fits "along the interior upper edge of the two sidewalls 34 and 36 and the front wall 58 of the truck bed 32" (column 5, lines 62-64). The lower frame forms the base support of the shelter. In contrast, Applicant's claim 1 explicitly recites a frame including front and rear support members which are pivotally attached to the front and rear of the truck bed. Robertson does not teach front and rear support members attached directly to the truck bed. Thus, the language of Applicant's claims distinguishes the teachings of Robertson. Further, Robertson's main frames include upper transverse frame members which engage an upper frame and a rigid top in a slidable fashion as described in the above cited passage. In contrast, Applicant's frame includes a ridge pole which is connected at one end to the front support member and at the other end to the rear support member, as recited in Applicant's claim 1. Robertson does not teach any ridge pole or

its connection to front and rear support members. Thus, the language of Applicant's claims distinguishes the teachings of Robertson.

Applicant's front and rear support members are capable of pivoting to a vertical position to elevate the ridge pole, raising the fabric shell forming the tent. Robertson's main frames necessitate additional components (for example, a lever structure, tension devices) to assist in raising the shelter:

Each leg 66 includes a lever plate 74 extending obliquely therefrom with a tension spring 76 attached between the lever plate 74 and the lower frame 57. The lever plate 74 is operable to impart a rotational force to the front and rear main frames 62 and 64 (column 6, lines 25-29; see also columns 8, lines 42-68 to column 9, lines 1-12).

Robertson's main frames require not only lever structures for applying a rotational force to the frames, but also tension devices for applying a tension force to the lever structures, thereby urging the main frames to rotate from the lowered to the raised positions. In contrast, Applicant's front and rear support members and ridge pole suffice to collapse and erect the shelter. Assembly of Applicant's claimed shelter is achieved manually, with the user simply pushing the frame towards the front of the truck. Unlike Applicant's claimed shelter, Robertson's shelter necessitates multiple, interconnected moving frames and parts for its lowering or raising. Robertson thus teaches away from a lightweight, rapidly and easily assembled shelter, as described by Applicant.

A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art (*KSR*). For the reasons set out above, Applicant submits that a combination of the references would not equate to the claimed invention due to fundamental differences between Eaton *et al.* and Applicant's invention, and to claim features not found in either Phillips *et al.* or Robertson. Reconsideration and withdrawal of this rejection of claim 1 and dependent claims 2-6, 8-11, 13 and 14 are thus respectfully requested.

The Office Action rejects claim 7 as being unpatentable over Eaton in view of Phillips *et al.* and Robertson as applied to claim 1 and further in view of U.S. Patent No. 6,604,777 to Neville. The Office Action states that it would have been obvious to one skilled in the art to provide in the

above references a slidable bed as taught by Neville in Figures 4 and 5 to reduce the effort of movement of the bunk.

Since rejected claim 7 is ultimately dependent upon amended claim 1, which Applicant believes patentably distinguishes over all cited prior art, there is respectfully no basis for the §103 rejection.

Applicant submits that it is improper to reject any of these claims under 35 U.S.C. §103. Applicant has established that the claimed invention is not a predictable use of prior art elements. Eaton *et al.*, Robertson and Phillips *et al.* teach away from Applicant's claimed invention, indicating that there is no reason for one skilled in the art having common sense to make the asserted combination. Even if combined, the prior art does not yield Applicant's claimed invention or disclose each limitation in Applicant's claims. A *prime facie* case of obviousness has not been established. In summary, claims 1-15 are not anticipated or rendered obvious in view of the cited prior art. Reconsideration and withdrawal of all claim rejections under 35 U.S.C. §103 are thus respectfully requested.

### CONCLUSION

In view of the foregoing remarks and amendments, it is respectfully submitted that this application is in condition for allowance and allowance thereof is respectfully requested.

Respectfully submitted,

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